

# San Francisco Bay Conservation and Development Commission

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September 22, 2017

## Application Summary

(For Commission consideration on October 5, 2017)

**Number:** Material Amendment No. One to BCDC Permit No. 2014.005.00  
**Date Filed:** September 19, 2017  
**90th Day:** December 18, 2017  
**Staff:** Hanna Miller (415/352-3616; hanna.miller@bcdc.ca.gov)

## Summary

**Applicant:** East Bay Regional Park District (EBRPD)

**Location:** The proposed *Albany Beach Restoration and Public Access Project* is located in the Cities of Albany and Berkeley, Alameda County. The project site is managed by the EBRPD and located within the McLaughlin Eastshore State Park between the termini of Buchanan (north) and Gilman Streets (south) and generally west of Golden Gate Fields (racetrack) (Figure 1). The Commission's *San Francisco Bay Plan* (Bay Plan) designates the site for Waterfront Park, Beach Priority Use.



Figure 1: Vicinity Map

## **Project**

**Overview:** As proposed by EBRPD, the project involves: (1) the construction of a 4,983-foot-long (0.94-mile) segment of the San Francisco Bay Trail (Bay Trail) between the termini of Buchanan and Gilman Streets; (2) the expansion of a recreational beach; and (3) the improvement of associated park facilities (Exhibit 1). The proposed Bay Trail section would include two overlooks and access to two adjoining fishing areas (Exhibit 2). The existing beach would expand by approximately 5,200 square feet. Within an approximately one-acre fenced area, sand dune, seasonal wetland, and “rain garden”<sup>1</sup> habitat would be improved. An approximately 31,500-square-foot (within and outside the Commission’s jurisdiction) open area would serve visitors, including kite surfers. The proposed redesigned main entry includes a 20-vehicle parking area and loading space. Other proposed amenities include: a restroom; bicycle parking; interpretive signage; a connector trail from the Bay Trail to the beach; and two universally-accessible beach mats (Exhibit 3).

On February 5, 2015, the Commission issued BCDC Permit No. 2014.005.00 to the EBRPD to implement the first phase (completed June 2016) of park facilities at the “neck” area of the Albany Bulb, including an enhanced public trail, an improved shoreline protection system, and restored intertidal habitat. The subject request for Material Amendment No. One to BCDC Permit No. 2014.005.00 concerns implementation of the final phases of the overall park improvement project.

## **Issues**

**Raised:** The Commission staff believes that the application for Material Amendment No. One to BCDC Permit No. 2014.005.00 raises two main issues: (1) whether the project is consistent with the McAtteer-Petris Act provisions on public access; and (2) the *San Francisco Bay Plan* policies regarding the priority use designation for the project site, public access, and recreation.

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<sup>1</sup> The rain garden referenced throughout this report is similar to a bioswale.

## Project Description

### **Project**

**Details:** The permit applicant, East Bay Regional Park District, proposes the following improvements within a public park area:

**Within the Commission’s 100-foot shoreline band jurisdiction and a *San Francisco Bay Plan Waterfront Park, Beach Priority Use Area*:**

1. Remove a 20,000-square-foot portion of a vehicle parking area;
2. Construct, use, and maintain in-kind an approximately 4,361-foot-long (0.83 miles), 12- to 14-foot-wide paved trail (San Francisco Bay Trail) with shoulders measuring up to 5 feet wide, including the placement of approximately 330 cubic yards (cy) of material to raise existing grades, and the development of two overlooks (with seating) at an approximately 970-square-foot area (North Fleming Point) and an approximately 250-square-foot area (South Fleming Point);
3. Place, use, and maintain in-kind approximately 1,095 cy of sand and soil to improve and expand a recreational beach by approximately 5,200 square feet and establish a sand dune area, and install, use, and maintain in-kind two approximately 500-square-foot universally-accessible mats at the north and south beach areas;
4. Establish, use, and maintain in-kind an approximately 1,670-square-foot area with sand dunes, a seasonal wetland, and a “rain garden” with an approximately 200-foot-long, 4-foot-high exclusion fence;
5. Construct, use, and maintain in-kind an approximately 9,930-square-foot portion of an open use area for park visitors; and
6. Install, use, and maintain in-kind various infrastructure, including: an approximately 130-foot-long section of an 18-inch-high sand wall; 27 outfalls measuring 4 inches diameter; one 24-inch-diameter outfall; approximately 350 cubic yards of rock riprap material within an approximately 2,200-square-foot area; and a minimum of three traffic signs.

### **Public**

**Access:** The proposed project would improve a public park area totaling approximately 329,600 square feet (7.57 acres) within and outside of the Commission’s jurisdiction. Within the Commission’s 100-foot shoreline band jurisdiction and Bay Plan-designated Waterfront, Beach priority use area, the project would take place within a 193,400-square-foot (4.44 acre) area and would add 68,682 square feet (1.58-acres) of new or improved access (Table 1). Of the area proposed for improvement, an approximately 1,670-square-foot area would remain closed to general access to protect the improved sand dune, seasonal wetland, and “rain garden” areas. Further, an approximately 2,683-foot-long (0.51-mile) section of the proposed 4,361-foot-long Bay Trail (0.94-miles) improvement

within the Commission’s jurisdiction may be relocated at a later date to facilitate redevelopment of the adjacent Golden Gate Fields complex—a design modification requiring a subsequent action by the Commission (Exhibit 4).

Type	Area (Square Feet)	Acres	Trail Length/Miles
Beach (expanded)	5,200	0.12	N/A
Open Use Area	9,930	0.23	N/A
SF Bay Trail	52,332	1.2	4,361/0.83
Trail Overlooks	1,220	0.03	-N/A
<b>Total</b>	<b>68,682</b>	<b>1.58</b>	<b>4,361/0.83</b>

**Table 1: Proposed Access in BCDC’s Jurisdiction**

### Schedule

**and Cost:** The proposed project is scheduled to commence in Spring 2018. The total project cost estimate is \$6.8 million.

### Staff Analysis

I. **Issues Raised:** The Commission staff believes that the application for Material Amendment No. One to BCDC Permit No. 2014.005.00 raises two main issues: (1) whether the project is consistent with the McAteer-Petris Act provisions on public access; and (2) the *San Francisco Bay Plan* policies regarding the priority use designation for the project site, public access, and recreation.

A. **Priority Use Area.** The project site is located within an area designated for Waterfront Park, Beach Priority Use in the Bay Plan Map No. 4 which, further, provide that projects in this area should “[p]rotect and provide public access to shellfish areas offshore.” According to the permit applicant, the project goals are to provide public shoreline access between Buchanan and Gilman Streets and enhance the Albany Beach park, including sand dune and seasonal wetland habitat.

The project site is located within the McLaughlin Eastshore State Park, which is operated by the EBRPD. The beach area is owned by the State of California, which has designated EBRPD as an agent to manage the park. EBRPD is attempting to acquire a 2.88-acre parking lot parcel east of the beach, which is currently owned by Golden Gate Fields, by eminent domain. Portions of the paving at the parcel subject to eminent domain would be demolished and removed (Exhibit 5). If EBRPD does not successfully acquire the parcel, the project would need to be redesigned. EBRPD holds an easement from Golden Gate Fields that is approximately 30 feet-wide along the shoreline, extending from the 2.88-acre parcel, referenced above, to the south terminating at Gilman Street.

The park is popular with pedestrians (especially people with dogs), bicyclists, kite surfers, kayakers, sunbathers, picnickers, and anglers. The main park entrance is located at the terminus of Buchanan Street. Free vehicle parking is available along Buchanan Street (43 spaces) while fee parking is allowed at an adjacent Golden Gate Fields lot (the subject of the eminent domain acquisition referenced above.) The San Francisco Bay Trail extends along Buchanan Street to the park. South of the park and the Golden Gate

Fields property, the Bay Trail extends along West Frontage Road south of the intersection with Gilman Street. Along the park shoreline between Buchanan and Gilman Streets, no formal public trail exists and, at the southern end of the property (west of Golden Gate Fields), the public informally accesses the shoreline through the privately-owned Golden Gate Fields area. It is worth noting there are posted beach advisory signs within the dunes next to the informal access paths to the beach. In the vicinity of Fleming Point, which is the approximate mid-point of the proposed trail alignment, the topography terminates in a steep highpoint making this area inaccessible to most visitors.

The beach is a designated San Francisco Bay Water Trail (Water Trail) site. Currently, kite surfers layout their equipment at the parking lot owned by Golden Gate Fields (the subject eminent domain parcel.) They use this parking lot for its proximity to the beach. The flat, even surface provides an easy launching site and convenient access from their cars to the water. Kayakers also prefer this area for the convenient car to water access.

In its current condition, the beach is not universally-accessible, and does not have fences to enclose the existing dunes and wetland area. Two peninsulas located south of the beach are used informally, albeit frequently for fishing. There is a eucalyptus grove at the northern end of the beach area that provides a wind protected area adjacent to the beach. A portable toilet is located at the terminus of Buchanan Street. Seating is located along Buchanan Street and the public trail on the Albany Neck. Public art has been informally placed along the Albany Bulb, Neck, and Beach, including a wooden throne on the beach. The throne would remain in place if the environmental testing does not indicate harmful chemicals. No potable water is available on site. The public may pay a fee to park in the Golden Gate Fields parking lot and uses this area to view the Bay and “tailgate”.

As proposed, the EBRPD would redesign the main entry to the park/beach area. Additionally, a 20-vehicle parking lot would be constructed to supplement the 43-vehicle public parking spaces along Buchanan Street. The large parking area at Golden Gate Fields would likely continue to provide additional parking access for the park. On days when the track is running, a parking fee is charged. The EBRPD parking lot and the Golden Gate Fields parking would be separated by bollards and a change in grade. Park users would be able to move between the two parking areas by a fire lane connector from the turnaround to the Golden Gate Fields parking lot.

A 4,983-foot-long section of the Bay Trail (with Bay view overlooks) located between Buchanan and Gilman Street would be constructed. The beach would be expanded in area and also improved for all users, including those with disabilities. Sand dune, seasonal wetland, and other vegetated areas (totaling 1.1 acres) would be improved in part to provide foraging and nesting habitat for native bird species yet would be closed to general access with fences (Exhibit 6). The dune area would measure approximately 16 feet high (NAVD88). The staff analysis has determined that views toward the Bay would not be blocked by the enhanced dunes (Exhibit 7).

An open use area would be constructed with ample space for all users, including board sailors. Two picnic tables would be provided near the north beach entrance. A beach entrance would be enhanced at the northern end of the beach and a second beach entrance with a seat wall, interpretive signage, and bicycle racks would be added at the southern end of the beach and would connect to the Bay trail and the parking lot. Accessible mats would extend from both beach entrances to the high-water line. No improvements to the fishing peninsulas are proposed.

*The Commission should consider whether the project would be consistent with the Bay Plan Waterfront Park, Beach Priority Use Area designation for the project site.*

- B. **Public Access.** In assessing whether the proposed project would provide maximum feasible public access consistent with the proposed activities, the Commission relies on the McAteer-Petris Act, the Bay Plan policies, access requirements of similar previously permitted projects.

Section 66602 of the McAteer-Petris Act states, in part, that “...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.”

The Bay Plan **Public Access** policies state, in part, that projects “should increase public access to the Bay to the maximum extent feasible.” Further, the policies state, in part, that “[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare;” that “diverse and interesting public access experiences should be provided.” Additionally, the policies state, in part, that public access “should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” The policies state that “[p]ublic access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Further, the policies state, in part, that “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby” and that “[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Recreation** policies state, in part, that “[d]iverse and accessible water-oriented recreational facilities...should be provided” and that “sandy beaches should be preserved...for recreational use....” Further, the policies state that waterfront parks “should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities” and that “[s]ites, features or facilities within designated waterfront parks that provide optimal conditions for specific water-oriented recreational uses should be preserved and, where appropriate, enhanced for those uses...” Additionally, “[p]ublic parking should be provided in a manner that does not diminish the park-like character of the site.” Regarding non-motorized boats, the policies state, in part, that

“[w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks.” To enhance this use, such areas should include “...launching facilities, restrooms, rigging areas, equipment storage....[and] be accessible...to ensure that boaters can easily launch their watercraft.”

1. **Maximum Feasible Public Access.** The proposed project would improve a public park and associated facilities to be operated and maintained by the EBRPD. The project includes the construction of a 0.94-mile section of the Bay Trail thereby closing a significant gap in the regional trail network. In total, the improvements would affect an approximately 7.57-acre area. Within the Commission’s 100-foot shoreline band jurisdiction, the project would affect a 4.44-acre area.

Within the Commission’s 100-foot shoreline band jurisdiction, the project would involve: the removal of a section of an existing vehicle parking area partly to create space for a recreational beach expansion; the creation of an 1,670-square-foot portion of a (non-tidal) habitat area to be fenced and, thus, closed to general public access; the development of a 9,930-square-foot open use area to all park users, including kite surfers, kayakers, and stand-up paddle boarders; and the installation of infrastructure, including a rock riprap erosion control system, a portion of an 18-inch-tall sandwall, universal beach access mats, and informational signage to, among other things, manage and reduce potential conflicts between pedestrian, bicycle, vehicle and board sailor traffic.

A universally-accessible approximately 0.83-mile Bay Trail would be built. The trail is designed with two viewing overlooks and a 200-foot-long bridge element along a steep—and otherwise inaccessible—section of the project site (Exhibit 8). In certain sections, the trail would be built with safety railings. The public would not be able to access the improved trail from the Golden Gate Fields property. From the adjacent “Jockey Lot,” where the trail would be elevated above the existing grade, views would be impacted. The Bay Trail south of the beach area would be built on land currently owned by the Golden Gate Fields to which the EBRPD holds an easement. The Bay Trail built east of the Beach would be built on land that EBRPD is in the process of acquiring through eminent domain. In the future, a 2,683-linear-foot (0.51-mile) section of the improved Bay Trail could be relocated to facilitate the redevelopment of Golden Gate Fields. A provision in the EBRPD’s current easement (with Golden Gate Fields) over that property requires that the public trail remain continuous even if segments are relocated.

Outside of the Commission’s jurisdiction, the proposed project involves the following activities: the development of a 20-vehicle parking lot, including three Americans with Disability Act-compliant spaces, and a vehicle turn-around and passenger loading area; a 620-foot-long section of the Bay Trail located east of the improved beach and terminating at the Buchanan Street entrance; a restroom; bicycle parking; a 0.72-acre section of an open use area; a 1.06-acre portion of (non-tidal) habitat areas; an accessible spur trail leading to the beach at the north end and an

accessible beach entry point with interpretive signage and seating at the south end; picnic tables; and a portion of an 18-inch-tall sandwall to prevent beach sand from entering onto the adjoining Bay Trail.

According to the EBRPD, the daily number of park visitors is estimated to increase by about 180 people (most arriving by bicycle), representing approximately 25% increase over current use. The project is designed to accommodate these visitors and meet the needs of existing and anticipated site users.

2. **Sea Level Rise and Flooding.** Within its 100-foot shoreline band jurisdiction, the Commission can deny a permit application only if it believes that a proposed project does not provide maximum feasible public access consistent with the project. The proposed project does not involve Bay fill and is not characterized as a “larger” shoreline project per the Bay Plan policies on climate change. It may be noted, however, that the climate change policies state, in part, that certain project types, such as public parks, “should be encouraged” even in areas where future flooding is likely a risk because the regional benefit of such projects outweighs flooding risks at this time.

The proposed park improvements are designed with a project life of 25 years except for the portions of the trail built with retaining walls and the bridge structure which have a design life of 50 years. Current mean higher high-water elevation is 6.2 (NAVD88.) The Federal Emergency Management Agency’s (FEMA) 100-year flood elevation at the site is 9.2 feet (NAVD88). Considering a 16-inch sea level rise by 2050, the 100-year flood elevation at most of the site is estimated at 10.53 feet (NAVD88) by mid-century. The anticipated mean higher high-water elevation at the replenished beach area by 2050 (inclusive of a 16-inch rise in sea level) would be 7.5 feet (NAVD88). The expanded beach area would be elevated to approximately 9 feet (NAVD88). By mid-century, the majority of the replenished beach would be flooding on a daily basis (Exhibit 9). The expanded beach area would be flooded during a current 50-year storm event and would be flooded by a 2-year storm event in 2050.

The proposed elevation of a 2,300-foot-long section of the Bay Trail would be 12 feet (NAVD88), above the level at which flooding is expected by year 2050. The proposed elevation of a 920-foot-long section of the Bay Trail, between the southern end of the beach and the fishing peninsula at Fleming Point, would be 9 feet (NAVD88). This low laying portion of the trail would be flooded by a 50-year storm event currently and a 2-year storm event by year 2050 (Exhibit 10). The 1,763-foot-long portion of the trail at Gilman Drive would be constructed at grade with elevations varying between 10.4 feet and 12 feet. This portion is anticipated to be flooded during a 50-year storm event by year 2050 (Exhibit 11). The EBRPD would temporarily close the trail during flood events. No further plans to address future flooding of the trail are proposed by the EBRPD.

3. **Design Review Board.** At the Commission’s Design Review Board (Board) meeting of April 17, 2017, an earlier version of the project was reviewed and the public expressed concerns about the following issues: potential trail and water access conflicts amongst bicyclists, pedestrians, kayakers and kite surfers; the scope and



location of paving material particularly within the parking area; the location of the proposed vehicle parking lot; and the limited space available to kite surfers for kite layout and water access.

The Board asked EBRPD to work with the kite surfing and kayaking community to ensure implementation of a safe and functional park design for all users. The Board also asked EBRPD to reconsider motorized and non-motorized circulation at the site. The Board suggested redesigning the Buchanan Street entry to improve the “sense of arrival” at the park. The Board had concerns about the fencing at the proposed improved (non-tidal) habitat areas on the beach. Following the DRB meeting, the EBRPD and City of Albany representatives held a variety of public meetings to refine the project and meet the needs of the various park user groups.

At its June 5, 2017 meeting, the Board reviewed a revised design with a smaller and relocated vehicle parking and turnaround area, and an open use area for kite surfers and others. The Board expressed concerns about landscaping of the open use area and lack of irrigation within the open use area. The Board supported the revised design particularly due to the smaller paved area but it had residual concerns about the modified parking lot design. The Board stated that public access to the areas located bayward of the proposed Bay Trail alignment, particularly at the two fishing peninsulas, should be ensured. The Board recommended EBRPD’s consideration of a defined unloading area and extended parking hours for kayakers. The Board recommended the use of markings and signs to alert users of potential cross-traffic concerns especially for pedestrians, bicyclists, and non-motorized boat users. Lastly, the Board stated that a sea level rise adaptation plan should be provided by EBRPD to address vulnerable, low-lying portions of the proposed Bay Trail.

In response, the applicant developed a management plan for maintenance of landscaping within the open use area, incorporated a sloped edge at the bayward side of the Bay Trail to facilitate public access to the two fishing peninsulas, enhanced the unloading areas at the parking lot, removed parking hour limits for vehicles, and developed signage to install at high traffic areas at the site.

4. **Comparable Projects.** The proposed public park improvement project is a voluntary one and not proposed to offset impacts associated with a development project. The Commission must still determine whether the applicant would provide maximum feasible public access consistent with the proposed project.

The Commission previously issued Permit 1981.009.00 to EBRPD for the enhancement of Robert Crown Memorial State Beach in the City of Alameda, Alameda County—a Bay Plan-designated Waterfront Park, Beach priority use area. The project involved the improvement of a sandy public beach, the enhancement of a dune system with a temporary fence, and the creation of a 6,800-linear-foot public path. The permit authorized the placement of sand at a 13-acre area located partly within the Commission’s 100-foot shoreline band and Bay jurisdiction. In concurring with Consistency Determination No. C1998.006.08, the Commission found that the federal government’s improvement of an approximately 100-acre park area at Crissy Field (City and County of San Francisco), including dune restoration with cable

fencing, the replenishment of a sandy beach, and the enhancement of a heavily-used public promenade provided maximum feasible public access consistent with the overall project.

*The Commission should consider whether the proposed project would be consistent with relevant provisions of the McAteer-Petris Act and the San Francisco Bay Plan, including policies on public access and recreation.*

**C. Commission Advisory Boards.**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not review the proposed project because Bay fill is not proposed.
2. **Design Review Board.** The proposed project was reviewed by the Commission's Design Review Board on April 17, 2017 and June 5, 2017, as discussed above.

**D. Environmental Review.** On November 21, 2012, EBRPD, acting as lead agency, certified the final Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) for the Albany Beach Restoration and Public Access Project.

On January 17, 2013 the Sustainability, Parks, Recycling and Wildlife Defense Fund (SPRAWLDEF) sued EBRPD stating that EBRPD did not adequately analyze the impacts of unleashed dogs on the site, windsurfer impacts to eelgrass beds, and did not fully analyze the *San Francisco Bay Plan* shoreline policies. On May 14, 2014, the Alameda County Court mandated that EBRPD publish a Supplemental Environmental Impact Report to analyze environmental impacts from the anticipated increase in dog use as a result of the project. A Supplemental EIR was adopted by EBRPD on June 2, 2015.

**E. Relevant Portions of the McAteer-Petris Act**

1. Section 66602
2. Section 66605.1
3. Section 66632

**F. Relevant Portions of the San Francisco Bay Plan**

1. *San Francisco Bay Plan* Map No. 4
2. *San Francisco Bay Plan* Policies on Public Access
3. *San Francisco Bay Plan* Policies on Recreation

**Exhibits**

1. **Area Context**
2. **Bay Trail Overview**
3. **Albany Beach Site Program**
4. **Bay Trail Gradients**
5. **Albany Beach Disposition of Existing Paving**
6. **Standard Design Features**
7. **Albany Beach Sections**
8. **Bridge**
9. **Generalized Effects of Sea Level Rise**
10. **Golden Gate Fields North Parking Lot- Sea Level Rise Projects**
11. **Golden Gate Fields Entrance Drive**